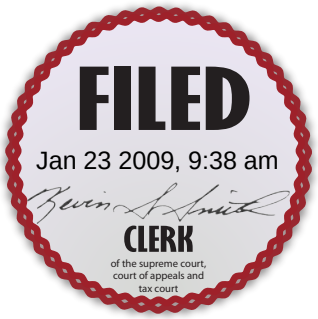

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IN THE
COURT OF APPEALS OF INDIANA

JOHN PATRICK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0806-CR-354
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0708-FA-205

JANUARY 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Appellant-Defendant John Patrick appeals the imposition of consecutive sentences after he pled guilty to three counts of child molesting as Class A felonies; one count of sexual misconduct with a minor as a Class B felony; and one count of sexual misconduct with a minor as a Class C felony. We affirm.

Patrick states one general issue, which we restate as the following two issues:

I. Whether the trial court's findings support its sentencing order.

II. Whether the sentence imposed was inappropriate in light of the nature of the offense and the character of the offender.

When the victim was seven years old, Patrick, who was the boyfriend of the victim's mother, began to fondle the victim's vagina. As the victim became older, Patrick made the victim perform and submit to oral sex and, eventually, to engage in sexual intercourse. These acts happened on numerous occasions over the six or seven years that Patrick continued to abuse the victim.

Patrick told the victim that if she tried to seek help, he would hurt her and her mother. Patrick also must have told the victim that if she reported the abuse, she would be taken away from her mother, as the victim stated that she didn't report the abuse because she didn't want to be separated from her mother. Patrick often told the victim that he wished she were her mother.

The victim's mother discovered the abuse when she caught Patrick making the victim submit to and perform oral sex. The victim's mother did not report the abuse because Patrick threatened her with physical harm and told her that she would go to jail if the abuse were discovered. Patrick described his abuse of the victim to her mother in

"explicit detail." On several occasions, child welfare authorities investigated the victim's home life; however, Patrick always influenced the victim to tell the authorities that Patrick had never touched her.

Eventually, a family member told the police of Patrick's activities. The victim told a police officer of the abuse, and Patrick eventually confessed to a police officer. As part of his confession, Patrick stopped short of blaming the victim, but he did say that the abuse was the mildly mentally handicapped victim's "idea." Tr. 10-11.

Patrick pled guilty without a plea agreement. After finding that Patrick's prior felony convictions and his abuse of a position of trust were aggravators that outweighed his guilty plea, the trial court ordered Patrick to be incarcerated for forty years on each of the Class A offenses, fifteen years for the Class B offense, and five years for the Class C offense. The trial court further ordered that the sentences run consecutively, for a total executed sentence of 140 years. Patrick now appeals.

I.

Patrick asserts that the trial court failed to (1) give significant mitigating weight to his guilty plea; (2) give significant mitigating weight to his limited criminal history; and (3) give mitigating weight to his claim of remorse. Patrick further asserts that the trial court improperly considered his conviction of multiple counts as an aggravator.

In *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on rehearing*, 875 N.E.2d 218 (2007), our supreme court held that trial courts are required to enter sentencing statements whenever imposing a sentence for felony offenses. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a

particular sentence. *Id*. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id*. Sentencing decisions are subject to review on appeal for an abuse of discretion. *Id*. A trial court may abuse its discretion by (1) failing to enter a sentencing statement at all; (2) failing to enter a sentencing statement that explains reasons for imposing a sentence; (3) giving reasons that are not supported by the record; (4) omitting reasons that are clearly supported by the record; or (5) giving reasons that are improper as a matter of law. *Id*. at 490-91. Except as a part of our review under Appellate Rule 7(B), we do not review the weight assigned to mitigating or aggravating factors. *Id*. at 491.

Patrick's first argument appears to go to the weight of his guilty plea; however, we will address the guilty plea here because Patrick's argument also goes to whether the trial court failed to give reasons to support the imposition of the sentence. We note that Indiana courts have recognized that a guilty plea is a significant mitigating factor in some circumstances. *Comer v. State*, 839 N.E.2d 721, 728 (Ind. Ct. App. 2005), *trans. denied.* Where the State reaps a substantial benefit from the defendant's plea, the defendant deserves to have a substantial benefit returned. *Id*. However, a guilty plea is not automatically a significant mitigating factor. *Id.* The significance of a plea is lessened if it is made on the eve of trial and after the State has already expended significant resources. *Gillem v. State*, 829 N.E.2d 598, 605 (Ind. Ct. App. 2005), *trans. denied.* Furthermore, the significance of the plea is lessened if there is substantial admissible

evidence of the defendant's guilt. *Scott v. State*, 840 N.E.2d 376, 383 (Ind. Ct. App. 2006), *trans. denied.*

Here, Patrick entered his guilty plea only five days before his second trial setting, after the State had issued its subpoenas to witnesses. More importantly, the record discloses that the victim's testimony and Patrick's confession constitute substantial admissible evidence that renders his guilty plea of little significance. The trial court did not abuse its discretion.

Patrick's second argument goes to the weight of his criminal history, and we will address it as part of our discussion below.

Patrick's third argument, however, appears to question whether the trial court abused its discretion in neglecting to address Patrick's remorse. Patrick contends that his remorse is clearly supported by the record.

Our review of the record discloses that Patrick's claim of "remorse" came only after he was prompted by defense counsel. Even then, Patrick made a very generic statement that he was "sorry for the pain that I've caused everyone and I'm really not a bad person. . . ." Tr. at 19. It is apparent that the trial court, which was in a far better position to determine the validity of Patrick's claim, determined that Patrick was not remorseful. As our supreme court has previously stated, saying that one is "very sorry about what happened" is equivocal and falls "'well short of full acceptance of responsibility.'" *Price v. State*, 765 N.E.2d 1245, 1253 (Ind. 2002) (quoting in part *Bonds v. State*, 721 N.E.2d 1238, 1243 (Ind. 1999)). We cannot say that the trial court abused its discretion in not giving any weight to Patrick's so-called "remorse."

Patrick's fourth argument is that the trial court abused its discretion by giving reasons that are improper as a matter of law. Specifically, he argues that the trial court improperly treated the multiple counts as an aggravator.

Our review of the record discloses that the trial court did not find the number of counts to be an aggravator; instead, the trial court emphasized the particular circumstances of the offenses. Specifically, the trial court noted that the abuse continued even though Patrick knew that child protective services was concerned for the victim's welfare. We cannot say that the trial court abused its discretion in considering these circumstances.

II.

Patrick contends that the sentence imposed was inappropriate. A sentence authorized by statute will not be revised unless the sentence is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B). We must refrain from merely substituting our opinion for that of the trial court. *Sallee v. State*, 777 N.E.2d 1204, 1216 (Ind. Ct. App. 2002), *trans. denied*. In determining the appropriateness of a sentence, a court of review may consider any factors appearing in the record. *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), *trans. denied.* The "nature of the offense" portion of the appropriateness review concerns the advisory sentence for the class of crimes to which the offense belongs; therefore, the advisory sentence is the starting point in the appellate court's sentence review. *Anglemyer v. State*, 868 N.E.2d at 491. The "character of the offender" portion of the sentence review

involves consideration of the aggravating and mitigating circumstances and general considerations. *Williams v. State*, 840 N.E.2d 433, 439-40 (Ind. Ct. App. 2006).

Here, Patrick repeatedly compelled the victim to submit to fondling, oral sex, and intercourse between her seventh and fourteenth birthdays. He manipulated the victim by increasing the severity of his abusive acts, both charged and uncharged, as the victim became older, and by threatening to harm her and her mother if she sought help. The long-term manipulation and grooming of a child warrants an enhanced sentence. *See Purvis v. State*, 829 N.E.2d 572, 588 (Ind. Ct. App. 2005), *trans. denied, cert. denied*, 547 U.S. 1026, 126 S.Ct. 1580, 164 L.Ed.2d 310 (2006) (holding that grooming a child victim and selecting a mentally vulnerable victim are proper aggravating factors). Furthermore, acts of a defendant to avoid detection or conceal facts relating to the crime, such as Patrick's manipulation of the victim and her mother to fool child welfare authorities, are valid aggravators. *See Roney v. State*, 872 N.E.2d at 201. Patrick's offenses exceeded the parameters of the advisory sentences; therefore, the nature of the offenses militates against a more lenient sentence.

With regard to the character of the offender, we note that Patrick repeatedly compelled the victim to perform sexual acts over a significant length of time. We infer from the evidence before the court that Patrick had many opportunities to reflect upon his conduct and the harm he was causing the victim, but he failed to do so. Indeed, he even went so far as to use the victim's dolls as "visual aids" as he masturbated and ejected his semen upon them. Sadly, his persistent manipulation and grooming of the mildly mentally handicapped victim over the years resulted in her stating on her victim impact

statement that Patrick "didn't do anything wrong to me." Tr. at 21. Finally, although Patrick's criminal history is not extensive, he did violate the terms of his probation on two occasions. Given these facts, we cannot conclude that Patrick's character compels a change in the sentence imposed by the trial court.

Patrick cites to *Walker v. State*, 747 N.E.2d 536 (Ind. 2001) and similar cases for the principle that consecutive sentences are inappropriate "where there was one victim, multiple counts of molestation, and a lack of criminal history." Appellant's Brief at 12. Patrick's manipulation, over a period of six or seven years, of a mildly mentally handicapped victim resulting in her confusion about the nature of the offenses, his deviant acts with her toys, his threatening of both the victim and her mother, his violation of a position of trust, and his failure to abide by the terms of two different probations distinguish this case from *Walker* and like cases.

Affirmed.

NAJAM, J., and BAILEY, J., concur.